21 C.J.S. Courts § 200

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Courts
M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc; and Lonnie E. Griffith, Jr., J.D.

VI. Rules of Adjudication, Decisions, and Opinions

B. Stare Decisis

2. Courts Making Prior Decision

§ 200. Same court—Panels or divisions

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Courts 90(2), 96(1), 96(4)

A division or panel of an appellate court is bound by a prior decision of another panel of that court until overturned by a higher court or the court en banc.

In the absence of manifest injustice,[1] a decision by one division of a court should be followed by another.[2] Panels of appellate courts are bound by previous decisions until overturned by a higher court or the court en banc.[3] However, the discretionary decision of an appellate panel to notice plain error is totally ad hoc, and a decision by one particular panel on one particular occasion to do so is not binding on later panels even when similar subject matter appears to be involved.[4]

The "law-of-the-circuit doctrine" means that the same issue presented in a later case in the same court should lead to the same result and that one three-judge panel does not have the authority to overrule another three-judge panel of the court,[5] absent en banc review or an intervening and

binding change in the state of the law,[6] such as a statutory amendment that makes the earlier panel decision clearly wrong.[7] Under this principle, a later panel must follow a decision by a prior panel unless and until the decision is modified or overturned by a higher court or if the initial ruling was made on an inadequate record or was designed to be preliminary or tentative, if newly discovered evidence bears on the question, or if reconsideration would avoid manifest injustice which requires a definite and firm conviction that a prior ruling is unreasonable or obviously wrong and a finding of prejudice.[8] An overturning by a later circuit court panel must be unequivocally directed by controlling United States Supreme Court precedent.[9] In diversity cases, a panel must adhere to a prior panel's interpretation of state law, without regard to any alleged existing confusion in that state's law, in the absence of a later state court decision or statutory amendment that renders the court's prior decision clearly wrong.[10] The general practice of a federal court of appeals panel when dealing with intracircuit splits is to follow the earlier opinion, on the theory that it should have controlled the later panels that created the conflict.[11]

CUMULATIVE SUPPLEMENT

Cases:

Law of the circuit doctrine protects horizontal precedent, or precedent from the same court, and means that generally a prior panel decision will not be disturbed. United States v. Moore-Bush, 963 F.3d 29 (1st Cir. 2020).

A panel of the Court of Appeals is not bound by a prior panel decision in the same Circuit in those rare instances in which authority that postdates the prior decision, although not directly controlling, nevertheless offers a sound reason for believing that the former panel, in light of fresh developments, would change its collective mind. United States v. Lewis, 963 F.3d 16 (1st Cir. 2020).

Under law of the circuit rule, newly constituted panels are, for most part, bound by prior panel decisions closely on point. United States v. Garcia-Cartagena, 953 F.3d 14 (1st Cir. 2020).

A panel of the Court of Appeals cannot overrule a prior precedential decision, let alone an en banc ruling, but if the prior decision rests on authority that subsequently proves untenable, or the Supreme Court specifically rejects the reasoning on which it is based, the Court of Appeals is not bound by it. United States v. Simmons, 999 F.3d 199 (4th Cir. 2021).

Even though a Fourth Circuit panel possesses the statutory and constitutional power to overrule another panel, Fourth Circuit panel does not do so as a matter of prudence, and that prudential

judgment is categorical, so a panel of judges cannot overrule a decision issued by another panel. Payne v. Taslimi, 998 F.3d 648 (4th Cir. 2021).

A panel of the Court of Appeals cannot overrule a prior precedential decision, let alone an en banc ruling, but if the prior decision rests on authority that subsequently proves untenable, or the Supreme Court specifically rejects the reasoning on which it is based, the Court of Appeals is not bound by it. United States v. Simmons, 11 F.4th 239, 116 Fed. R. Evid. Serv. 510 (4th Cir. 2021).

When the United States Supreme Court expressly or implicitly overrules one of the precedents of the Court of Appeals, another panel of the same Court of Appeals has the authority and obligation to declare and implement this change in the law. Hines v. Quillivan, 982 F.3d 266 (5th Cir. 2020).

Under the rule of orderliness, each panel deciding an appeal is bound by Fifth Circuit precedents, as district courts are for other reasons. Team Contractors, L.L.C. v. Waypoint Nola, L.L.C., 976 F.3d 509 (5th Cir. 2020).

On appeal challenging a sentencing court's determination that defendant had two prior convictions for controlled substance offenses, the Court of Appeals was bound by its own prior decisions that the state statutes under which defendant was convicted of manufacture or delivery of controlled substance, or of possession with intent to deliver, were not overbroad; only the Court of Appeals en banc could overturn these decisions. United States v. Roberts, 975 F.3d 709 (8th Cir. 2020).

In the Ninth Circuit, a three-judge panel of the Court of Appeals must apply binding precedent even when it is clearly wrong, because (for example) it failed to recognize an intervening change in the law. Silva v. Barr, 965 F.3d 724 (9th Cir. 2020).

Prior circuit decision in *Solorio-Ruiz v. Sessions*, 881 F.3d 733, which held that carjacking under California law was not a crime of violence because it required only force in excess of that required to seize the vehicle, was irreconcilable with Supreme Court's decision in *Stokeling v. United States*, 139 S. Ct. 544, 202 L.Ed.2d 512 (2019), which clarified that requisite violent force for crime of violence was any force sufficient to overcome victim's physical resistance, however slight that may be, and, thus, circuit decision was not binding on three-judge panel of the Court of Appeals, for purposes of determining whether defendant's prior carjacking conviction under California law qualified as crime of violence under Sentencing Guidelines provision governing calculation of defendant's criminal history category. U.S.S.G. § 4A1.1(e); Cal. Penal Code § 215. United States v. Baldon, 956 F.3d 1115 (9th Cir. 2020).

A prior decision of the Court of Appeals is binding on a subsequent Court of Appeals panel unless it is clearly irreconcilable with the reasoning or theory of intervening higher authority. United States v. Mayea-Pulido, 946 F.3d 1055 (9th Cir. 2020).

Court of Appeals, on review of the affirmance, by the Board of Immigration Appeals (BIA), of the denial of alien's application for withholding of removal, was bound by prior panel precedent, absent en banc reconsideration or a contrary superseding Supreme Court decision. Immigration and Nationality Act § 241, 8 U.S.C.A. § 1231(b)(3)(A); 8 C.F.R. §§ 1208.16(b)(1)(i), 1208.16(b)(2). Perez-Garcia v. Barr, 814 Fed. Appx. 356 (10th Cir. 2020).

One panel of Court of Appeals cannot overrule another in absence of intervening Supreme Court decision. United States v. Fagatele, 944 F.3d 1230 (10th Cir. 2019).

In examining a splintered decision of a three-judge panel of the Court of Appeals, another panel should strive to decide the case before it in a way consistent with how the court's opinions in the relevant precedent would resolve the current case. Harte v. Board of Commissioners of County of Johnson, Kansas, 940 F.3d 498 (10th Cir. 2019).

The prior panel precedent rule applies only to the actual holdings of prior decisions on issues that were actually decided by the earlier panel of the Court of Appeals. United States v. Bazantes, 978 F.3d 1227 (11th Cir. 2020).

Adherence to a prior Court of Appeals decision is strict, but when there are conflicting prior panel decisions, the oldest one controls. Monaghan v. Worldpay US, Inc., 955 F.3d 855 (11th Cir. 2020).

Under the prior panel rule, Court of Appeals was not bound by prior appellate court panel holding in collaterally reviewing a district court's denial of a habeas petitioner's motion to substitute counsel which did not address subject-matter jurisdiction. 28 U.S.C.A. § 2254. Crain v. Secretary, Florida Department of Corrections, 918 F.3d 1294 (11th Cir. 2019).

Under law-of-the-circuit doctrine, after National Labor Relations Board (NLRB) chose not to seek Supreme Court review in different case in which Court of Appeals had decided that package delivery service's single-route drivers at certain location were independent contractors, not employees protected by NLRA, NLRB could not effectively nullify such decision by asking second panel of Court of Appeals to apply same law to same material facts involving same parties but give a different answer. National Labor Relations Act § 2(3), 29 U.S.C.A. § 152(3). FedEx Home Delivery, an operating division of FedEx Ground Package System, Inc. v. National Labor Relations Board, 849 F.3d 1123 (D.C. Cir. 2017).

[END OF SUPPLEMENT]

Footnotes

1 Colo.—Denver Fire Reporter and Protective Co. v. Dutton, 736 P.2d 1255 (Colo. App. 1986).

2 Mich.—City of Detroit v. Recorder's Court Traffic and Ordinance Judge, 104 Mich. App. 214, 304 N.W.2d 829 (1981).

N.C.—In re Estate of Johnson, 205 N.C. App. 641, 697 S.E.2d 365 (2010).

3 U.S.—U.S. v. Yoon, 398 F.3d 802, 2005 FED App. 0092P (6th Cir. 2005); U.S. v. Petho, 409 F.3d 1277 (11th Cir. 2005); Barclay v. U.S., 443 F.3d 1368 (Fed. Cir. 2006).

D.C.—Austin v. U.S., 847 A.2d 391 (D.C. 2004).

Va.—Armstrong v. Com., 263 Va. 573, 562 S.E.2d 139 (2002).

Conflicting panel decisions, see § 215.

4 Md.—Morris v. State, 153 Md. App. 480, 837 A.2d 248 (2003).

5 U.S.—U.S. v. Heyer, 740 F.3d 284 (4th Cir. 2014); In re Grant, 635 F.3d 1227 (D.C. Cir. 2011).

6 U.S.—Bennett v. MIS Corp., 607 F.3d 1076 (6th Cir. 2010).

7 U.S.—Bustos v. Martini Club Inc., 599 F.3d 458 (5th Cir. 2010).

8 U.S.—U.S. v. Carta, 690 F.3d 1 (1st Cir. 2012).

9 U.S.—In re Texas Grand Prairie Hotel Realty, L.L.C., 710 F.3d 324 (5th Cir. 2013).

10 U.S.—Lamar Advertising Co. v. Continental Cas. Co., 396 F.3d 654 (5th Cir. 2005).

11 U.S.—Murphy v. FedEx Nat. LTL, Inc., 618 F.3d 893 (8th Cir. 2010).

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